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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- - - - -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 23, 2012

4:06 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

(Doc# 90, 47) Telephone Status Conference on the Record RE:
Motion Authorizing The Debtors to Continue To Perform Under The
Ally Bank Servicing Agreements In The Ordinary Course of
Business.

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RESIDENTIAL CAPITAL, LLC, ET AL.
P R O C E E D I N G S

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THE COURT: We are on the record in Residential
Capital, number 12-12020.

I have the list of appearances, at least of those who
had checked in as of a few minutes ago.

Is debtors' counsel going to begin?

MR. GOREN: Yes, Your Honor. Todd Goren, Morrison &
Foerster, on behalf of the debtors.

THE COURT: Go ahead.

MR. GOREN: Well, we had hoped to get you a final
version of a stipulation resolving all aspects of the
subservicing dispute before today's conference. We weren't
quite able to get there, but I do think we are almost done;
I'll say that. I think there's, at this point, just one minor
issue that needs to be worked through. It is my strong hope
that the parties will be able to work through that this
afternoon, following the conference, and finalize the
stipulation this afternoon.

So I guess from the debtors' perspective, at least,
the main question we wanted to address with you today was the
process by which we would then tee up that stipulation. You
had suggested at the last hearing maybe filing it on notice of
presentment, so we just wanted to confirm with Your Honor and
the parties the process by which we could tee that up.

I am not sure if either the creditors' committee or

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 Ally want to say anything additional.

2 THE COURT: Somebody from the creditors' committee
3 want to be heard?

4 MR. ECKSTEIN: Your Honor, good afternoon. It's
5 Kenneth Eckstein from Kramer Levin.

6 I am able to confirm what Mr. Goren said, that I think
7 we are very close to finalizing a stipulation and proposed
8 order. I wouldn't want to suggest that it's as simple as just
9 one issue, because the stipulation and order is complex, and it
10 has been the subject of extensive, extensive negotiation and
11 drafting. But I do think it is fair to say that, based on
12 where we are right now, we should be able, by the end of today,
13 to have a stipulation and order that my office, and I believe
14 Mr. Schrock will say from the vantage point of his office, are
15 prepared to submit to our respective clients and recommend that
16 the clients accept. And I think, at this point in time, we
17 both feel as if we're going to be there by the end of the day
18 today.

19 So assuming that's correct, I would say that we will
20 have something that the debtor can submit to the Court as a
21 proposed stipulation and proposed order that would resolve the
22 motion consensually.

23 I know Your Honor really hasn't heard the terms of the
24 resolution, and I don't know whether the simple stipulation
25 will be enough, but Your Honor will hear the terms at some

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 point.

2 And I guess it is fair to say what process -- the
3 process we thought made sense -- and I had brief conversation
4 with Mr. Schrock about this -- was, assuming we get there, I
5 think it makes sense for the debtor to submit the stipulation
6 and proposed order. I guess it could be noticed for
7 settlement.

8 Our sense was that it would make sense for the
9 committee, and I'm assuming the same to be true for Ally, to
10 submit a statement that would, I guess, follow the submission
11 of the stipulation, so the Court at least had our perspective
12 on the settlement. And I think we'd want to flag submissions
13 that we think need to be considered by the examiner that were
14 raised by the motion itself. They don't need to be adjudicated
15 now, but we do think need to be examined.

16 And I guess, Your Honor, you can set this down for the
17 11th. I don't know whether you'll need any kind of
18 presentation on the 11th, or whether, based upon the
19 stipulation and the submissions, if there's no other pleadings
20 filed, Your Honor could just enter the order if you felt
21 comfortable.

22 THE COURT: Okay. Mr. Schrock, do you want to be
23 heard?

24 MR. SCHROCK: Yes, thank you, Your Honor. Again, Ray
25 Schrock of Kirkland & Ellis on behalf of Ally Financial, Inc.

RESIDENTIAL CAPITAL, LLC, ET AL.

8

1 and Ally Bank.

2 I can confirm largely what Mr. Eckstein has said. We
3 agree with the procedure. We agree that we are very close, and
4 we should be in a position by the end of today to have
5 something to recommend to the clients. I think that it's off
6 to the clients and I hesitate to say that anything is over
7 until it's over, especially on this very complex matter. But
8 the process that Mr. Eckstein outlined, I think that's a good
9 suggestion. We were thinking along the lines of something very
10 similar. And hopefully, we can put this issue behind us for
11 the time being and move on to other issues in the case.

12 THE COURT: Let me ask you: in a prior hearing, I
13 don't know whether it was you, Mr. Schrock, or someone from the
14 debtors' counsel indicated that this all had to be vetted with
15 various regulators. And I don't know whether that's happened,
16 whether you -- I mean, my questions really go to the process
17 going forward, since many things in the case have drawn
18 objections, not necessarily from those who are on the phone
19 today. I am not sure exactly what gets accomplished by just
20 doing it on presentment, if there are going to be objections
21 sort of coming in out of left field. But, specifically, right
22 now, I've been told before that the regulators, various
23 regulators had to -- I don't know whether approval is the right
24 term -- but had to express comfort with what was being
25 proposed. Can somebody shed light on that?

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 MR. SCHROCK: Your Honor, I'd be happy to. Again,
2 it's Ray Schrock, on behalf of Ally Financial and Ally Bank.

3 It's a good question. We have had various
4 conversations with our regulatory bodies, the Federal Reserve,
5 as well as the FDIC. And we discussed this very issue of
6 process earlier today with Ally Bank.

7 We are, given that we've been bringing parties up to
8 speed as we move along, we're optimistic that there shouldn't
9 be any issues. But I think, just in case, putting it out on
10 presentment, and certainly, if there were any issues raised by
11 regulatory bodies, we would make the Court aware immediately,
12 as well as other parties-in-interest. But we're optimistic we
13 can work with the current construct that we've been working on
14 for the past few weeks.

15 THE COURT: Mr. Goren, Mr. Eckstein, do you have any
16 comments on that?

17 MR. GOREN: No; I mean, that sounds right to us. I
18 mean, I do know that the DOJ has been very focused on this
19 issue as it relates to the DOJ/AG settlement and the debtors'
20 solicitation of loans for modification.

21 We did share with them a draft a week or two back. We
22 didn't receive any comments to it, but I'm quite certain
23 they'll at least want to see the final output on the
24 stipulation.

25 So I think a notice of presentment, where everyone

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 gets a chance to look at it and confirm that the stipulation is
2 acceptable makes sense.

3 THE COURT: Mr. Eckstein?

4 MR. ECKSTEIN: My understanding has been that the
5 regulators had been kept current on this, at least that's how
6 it's been described to us. And we have gone to great lengths
7 to try to structure something that would not run afoul of any
8 regulatory concerns, but there's no absolute guarantee.

9 So I think the process of setting an objection
10 deadline would be the most reasonable way to go. And,
11 obviously, if there are objections, I would imagine there's no
12 question that the Court would want to hear them. And the Court
13 may -- given the complexity of this, the Court may want to hear
14 this presented at the hearing on the 11th regardless. There's
15 a lot of history to this already.

16 THE COURT: Yes. No, and I think I do want to hear
17 it. But I think I'm comfortable having it on presentment for
18 September 11th with -- I guess one thing, I know you think
19 you're close. When do you realistically think you'd be in
20 a position to file it? I don't know, Mr. Schrock or Mr. Goren,
21 whether you're in the best position -- or Mr. Eckstein -- I
22 don't care who responds to it. When do you think you'd be in a
23 position? Because I'll set an objection deadline, but I want
24 it to be realistic.

25 MR. ECKSTEIN: If I could suggest, from our

RESIDENTIAL CAPITAL, LLC, ET AL.

11

1 standpoint, this will not be the first time that the committee
2 will have seen this, so this is quite advanced. I would think
3 that we can be, assuming we get this out to everybody this
4 evening, I think, by the end of the day tomorrow, we could have
5 signoff. And so it seems to me that, by Monday, this is
6 fileable.

7 MR. SCHROCK: Yes, Your Honor. It's Ray Schrock
8 again. I agree with that. I think tomorrow, Monday at the
9 latest.

10 I also think, Your Honor, just to emphasize, I think
11 filing statements would be beneficial for all parties
12 concerned, just given the complexity of the issues and for
13 parties just to be able to put their perspective on the issues
14 being settled.

15 THE COURT: Okay. I'm just now looking at the
16 calendar. Hold on.

17 When would you be in a position to file the
18 statements, do you believe? I mean, that may have a bearing on
19 whether anybody comes out of the woodwork with objections, too,
20 so --

21 MR. ECKSTEIN: Your Honor, I was going to suggest, if
22 I may, that given the Labor Day weekend, that if we could make
23 the objection deadline Wednesday the 5th, that would give
24 people a reasonable amount of time. Assuming Monday the
25 pleading is filed, it would give people, essentially, a week

RESIDENTIAL CAPITAL, LLC, ET AL.

12

1 plus a few days into the following week.

2 THE COURT: Well, the 5th was in fact the date I was
3 looking at on the calendar, Mr. Eckstein. But the further
4 question is, I think the suggestion of the debtor, the
5 committee, and Ally filing statements is a good one. And when
6 will you be in a position to do that?

7 MR. ECKSTEIN: We would file it on the 5th.

8 THE COURT: Well, the problem with that is you're all
9 supporting the settlement. Setting the objection deadline for
10 the same day that you propose to file statements in support
11 doesn't really give the objectors an opportunity to fully
12 appreciate what's going on, let me put it that way.

13 MR. ECKSTEIN: I am not sure I would call the
14 statements necessarily supportive statements, as much as sort
15 of illuminating on a lot of the issues that are not necessarily
16 clear from the stipulations.

17 THE COURT: Well, look, I don't want to -- I don't
18 want to screw up anybody's weekend, but what I'm going to do is
19 I'm going to require -- I'm going to set a deadline for filing
20 of the stipulation and any explanatory statements -- I won't
21 even call them statements in support -- but explanatory
22 statements by 5 p.m., Monday, August 27th. And then I'm going
23 to set the objection deadline for 5 p.m. Wednesday, September
24 5th. And any further responses or replies to objections for
25 Friday, September 7th, at 5 o'clock.

RESIDENTIAL CAPITAL, LLC, ET AL.

13

1 I'm not encouraging lengthy filings, but I think it's
2 important that other parties-in-interest who haven't been
3 engaged in this process see not only the stipulation, but the
4 explanatory statements that will accompany it. And that's why
5 I want to set that deadline for the same time as the filing of
6 the stipulation and before the objection deadline, so people
7 can appreciate some of the complexities and why you've gotten
8 to where you are.

9 Let me just ask this: is this just kicking the can
10 down the road? Or for what period is this a resolution of
11 these issues?

12 MR. ECKSTEIN: Your Honor, if I may? It's Ken
13 Eckstein. I am not sure I would simply limit it to kicking the
14 can down the road. It's actually, I think it's an interesting
15 compromise which, on the one hand, allows the servicing to be
16 approved. It facilitates the payments of the monies that need
17 to be paid to Ally Bank, and it allows the issues that were in
18 dispute, particularly with respect to the indemnification and
19 who should be responsible for the indemnification, to be
20 deferred in an even-handed way to allow the examiner to do his
21 investigation and to not bog the Court down and the parties
22 down with the further discovery with respect to this motion
23 now.

24 THE COURT: Okay.

25 MR. ECKSTEIN: I think it's fair. It does kick the

RESIDENTIAL CAPITAL, LLC, ET AL.

14

1 dispute with respect to the indemnification to a later date,
2 and it may be -- and it specifically provides for the
3 possibility of litigation of the dispute after the examiner's
4 report.

5 THE COURT: Okay. That's, I think, from the prior
6 hearings and my comments, I think that's a big part of this.
7 The examiner ought to be able to conduct his investigation.
8 And, look, it's been clear from the start that the issue of the
9 indemnification and whether AFI or the debtors should -- you've
10 all agreed that Ally Bank should be paid. The question is
11 whether the debtors pay it or whether AFI pays it, or some
12 combination.

13 So I know one of the examiner's counsel is on the
14 phone. Have you seen a draft of this? Do you understand what
15 the concept is here?

16 MR. SEIFE: Your Honor, it's Howard Seife, Chadbourne
17 & Parke for the examiner.

18 No, we have not been a party to the various
19 discussions or negotiations, so we're not aware of the terms.
20 And I must say my ears perked up when Mr. Eckstein alluded to
21 certain issues which would be reserved for the examiner.

22 We are looking into the indemnity and related issues.
23 And I don't know if the reference was to additional issues or
24 other things which have come up in the course of their
25 negotiation. So I was going to inquire exactly what he was

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 referring to and whether it's something that's incorporated
2 directly in their settlement agreement or stipulation.

3 THE COURT: Well, I think, at this point, I'll let you
4 all do that offline.

5 MR. SEIFE: Yes.

6 THE COURT: I am not sure that we need to include that
7 on the record now.

8 MR. ECKSTEIN: We will sit with the examiner's counsel
9 and make sure that they are fully up to speed on everything we
10 know. And I think everything is within the scope of the
11 examiner's investigation anyway.

12 THE COURT: Okay. All right, anybody else have
13 anything they want to say now?

14 All right, so just a recap on the schedule. I'm
15 imposing a deadline of Monday. In order to go forward with
16 this at a hearing on September 11th, I'm imposing a deadline of
17 5 p.m. Monday for filing of the proposed stipulation and the
18 statements of the various parties relating to the proposed
19 stipulation. The objection deadline will be Wednesday,
20 September 5th, at 5 o'clock. And a response or reply deadline
21 will be Friday, September 7th at 5 o'clock. And the matter
22 will be set for the Court's ResCap calendar on September 11th.
23 Okay?

24 MR. SCHROCK: Your Honor, Ray Schrock. Thank you very
25 much. I hope to get the clients to sign off here in the very

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 near future.

2 THE COURT: Okay. Let me ask this: if something goes
3 awry here, would you -- so that this is not going to happen on
4 the schedule -- will somebody endeavor to let me know?

5 MR. GOREN: Todd Goren, Your Honor, Morrison &
6 Foerster. We will do so, Your Honor.

7 THE COURT: Okay. Thank you very much.

8 MR. GOREN: Thank you.

9 THE COURT: We're adjourned. Thank you.

10 (Whereupon these proceedings were concluded at 4:25 PM)

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C E R T I F I C A T I O N

I, Janice D. Badeau, certify that the foregoing transcript is a true and accurate record of the proceedings.



JANICE D. BADEAU

AAERT Certified Electronic Transcriber CET**D-665

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Date: August 24, 2012

August 23, 2012

A	5:4	4:13	confirm (4)	DOJ (1)
	appreciate (2)	call (2)	5:23;6:6;8:2;10:1	9:18
	12:12;13:7	12:13,21	consensually (1)	DOJ/AG (1)
able (6)	approval (1)	can (10)	6:22	9:19
5:13,16;6:6,12;	8:23	6:20;7:16;8:2,10,	considered (1)	done (1)
11:13;14:7	approved (1)	25;9:13;11:3;13:7,9,	7:13	5:13
absolute (1)	13:16	14	construct (1)	down (5)
10:8	aspects (1)	Capital (1)	9:13	7:16;13:10,14,21,
accept (1)	5:11	5:3	conversation (1)	22
6:16	assuming (5)	care (1)	7:3	draft (2)
acceptable (1)	6:19;7:4,9;11:3,24	10:22	conversations (1)	9:21;14:14
10:2	Attorneys (3)	case (3)	9:4	drafting (1)
accompany (1)	4:3,12,20	8:11,17;9:9	counsel (4)	6:11
13:4	August (1)	certain (2)	5:6;8:14;14:13;	drawn (1)
accomplished (1)	12:22	9:22;14:21	15:8	8:17
8:19	Avenue (1)	certainly (1)	course (1)	
actually (1)	4:4	9:10	14:24	E
13:14	aware (2)	CHADBOURNE (2)	COURT (27)	earlier (1)
additional (2)	9:11;14:19	4:19;14:16	5:2,9;6:2,20;7:11,	9:6
6:1;14:23	awry (1)	chance (1)	22;8:12;9:11,15;	ears (1)
address (1)	16:3	10:1	10:3,12,12,13,16;	14:20
5:20		checked (1)	11:15;12:2,8,17;	ECKSTEIN (18)
adjourned (1)	B	5:5	13:21,24;14:5;15:3,6,	6:4,5;8:2,8;9:15;
16:9		clear (2)	12;16:2,7,9	10:3,4,21,25;11:21;
adjudicated (1)	back (1)	12:16;14:8	Court's (1)	12:3,7,13;13:12,13,
7:14	9:21	clients (5)	15:22	25;14:20;15:8
advanced (1)	Bank (7)	6:15,16;8:5,6;	creditors' (2)	either (1)
11:2	4:3,12;8:1;9:2,6;	15:25	5:25;6:2	5:25
AFI (2)	13:17;14:10	close (3)	current (2)	ELLIS (3)
14:9,11	based (2)	6:7;8:3;10:19	9:13;10:5	4:2,11;7:25
afoul (1)	6:11;7:18	combination (1)	D	else (1)
10:7	bearing (1)	14:12		15:12
afternoon (3)	11:18	comfort (1)	date (2)	emphasize (1)
5:17,18;6:4	begin (1)	8:24	12:2;14:1	11:10
Again (3)	5:6	comfortable (2)	day (4)	encouraging (1)
7:24;9:1;11:8	behalf (3)	7:21;10:17	6:17;11:4,22;12:10	13:1
ago (1)	5:8;7:25;9:2	coming (1)	days (1)	end (4)
5:5	behind (1)	8:21	12:1	6:12,17;8:4;11:4
agree (3)	8:10	comments (3)	deadline (12)	endeavor (1)
8:3,3;11:8	beneficial (1)	9:16,22;14:6	10:10,23;11:23;	16:4
agreed (1)	11:11	committee (5)	12:9,19,23;13:5,6;	engaged (1)
14:10	best (1)	5:25;6:2;7:9;11:1;	15:15,16,19,20	13:3
agreement (1)	10:21	12:5	debtor (3)	enough (1)
15:2	big (1)	complex (2)	6:20;7:5;12:4	6:25
ahead (1)	14:6	6:9;8:7	debtors (3)	enter (1)
5:9	bodies (2)	complexities (1)	5:8;14:9,11	7:20
allow (1)	9:4,11	13:7	debtors' (4)	especially (1)
13:20	bog (1)	complexity (2)	5:6,19;8:14;9:19	8:7
allows (2)	13:21	compromise (1)	deferred (1)	ESQ (5)
13:15,17	both (1)	13:15	13:20	4:7,8,16,24,25
alluded (1)	6:17	concept (1)	described (1)	essentially (1)
14:20	brief (1)	14:15	10:6	11:25
Ally (14)	7:3	concerned (1)	directly (1)	even (1)
4:3,3,12,12;6:1;	bringing (1)	11:12	15:2	12:21
7:9,25;8:1;9:2,2,6;	9:7	concerns (1)	discovery (1)	even-handed (1)
12:5;13:17;14:10	C	10:8	13:22	13:20
almost (1)		concluded (1)	discussed (1)	evening (1)
5:13	CA (1)	16:10	9:5	11:4
along (2)	4:14	conduct (1)	discussions (1)	everybody (1)
8:9;9:8	calendar (3)	14:7	14:19	11:3
amount (1)	11:16;12:3;15:22	conference (2)	dispute (4)	everyone (1)
11:24	California (1)	5:12,17	5:12;13:18;14:1,3	9:25
appearances (1)				

August 23, 2012

exactly (2) 8:19;14:25 examined (1) 7:15 Examiner (6) 4:20;7:13;13:20; 14:7,17,21 examiner's (4) 14:3,13;15:8,11 explanatory (3) 12:20,21;13:4 express (1) 8:24 extensive (2) 6:10,10	5:8;16:6 follow (1) 7:10 following (2) 5:17;12:1 forward (2) 8:17;15:15 Francisco (1) 4:14 Friday (2) 12:25;15:21 fully (2) 12:11;15:9 further (3) 12:3,24;13:22 future (1) 16:1	4:8 history (1) 10:15 Hold (1) 11:16 Honor (17) 5:7,23;6:4,23,25; 7:16,20,24;9:1;11:7, 10,21;13:12;14:16; 15:24;16:5,6 hope (2) 5:15;15:25 hoped (1) 5:10 hopefully (1) 8:10 HOWARD (2) 4:24;14:16	Kenneth (1) 6:5 kept (1) 10:5 kick (1) 13:25 kicking (2) 13:9,13 kind (1) 7:17 KIRKLAND (3) 4:2,11;7:25 Kramer (1) 6:5	main (1) 5:20 makes (2) 7:5;10:2 many (1) 8:17 MARK (1) 4:16 matter (2) 8:7;15:21 may (6) 10:13,13;11:18,22; 13:12;14:2 maybe (1) 5:22 McKANE (1) 4:16 mean (4) 8:16;9:17,18;11:18 minor (1) 5:14 minutes (1) 5:5 modification (1) 9:20 Monday (6) 11:5,8,24;12:22; 15:15,17 monies (1) 13:16 Morrison (2) 5:7;16:5 most (1) 10:10 motion (3) 6:22;7:14;13:22 move (2) 8:11;9:8 much (3) 12:14;15:25;16:7 must (1) 14:20
F	G	I	L	N
facilitates (1) 13:16 fact (1) 12:2 fair (3) 6:11;7:2;13:25 FDIC (1) 9:5 Federal (1) 9:4 feel (1) 6:17 felt (1) 7:20 few (3) 5:5;9:14;12:1 field (1) 8:21 file (4) 10:20;11:17;12:7, 10 fileable (1) 11:6 filed (2) 7:20;11:25 filing (6) 5:22;11:11;12:5, 19;13:5;15:17 filings (1) 13:1 final (2) 5:10;9:23 finalize (1) 5:17 finalizing (1) 6:7 Financial (4) 4:3,12;7:25;9:2 first (1) 11:1 flag (1) 7:12 focused (1) 9:18 Foerster (2)	GAYDA (1) 4:25 gets (2) 8:19;10:1 given (4) 9:7;10:13;11:12,22 goes (1) 16:2 good (4) 6:4;8:8;9:3;12:5 GOREN (10) 5:7,7,10;6:6;9:15, 17;10:20;16:5,5,8 great (1) 10:6 guarantee (1) 10:8 guess (6) 5:19;7:2,6,10,16; 10:18	illuminating (1) 12:15 imagine (1) 10:11 immediately (1) 9:11 important (1) 13:2 imposing (2) 15:15,16 Inc (1) 7:25 include (1) 15:6 incorporated (1) 15:1 indemnification (4) 13:18,19;14:1,9 indemnity (1) 14:22 indicated (1) 8:14 inquire (1) 14:25 interesting (1) 13:14 into (2) 12:1;14:22 investigation (3) 13:21;14:7;15:11 issue (6) 5:15;6:9;8:10;9:5, 19;14:8 issues (11) 8:11;9:9,10;11:12, 13;12:15;13:11,17; 14:21,22,23	Labor (1) 11:22 largely (1) 8:2 last (1) 5:22 later (1) 14:1 latest (1) 11:9 least (5) 5:4,19;7:11;9:23; 10:5 left (1) 8:21 lengths (1) 10:6 lengthy (1) 13:1 Levin (1) 6:5 Lexington (1) 4:4 light (1) 8:25 limit (1) 13:13 lines (1) 8:9 list (1) 5:4 litigation (1) 14:3 LLP (3) 4:2,11,19 loans (1) 9:20 look (3) 10:1;12:17;14:8 looking (3) 11:15;12:3;14:22 lot (2) 10:15;12:15	near (1) 16:1 necessarily (3) 8:18;12:14,15 need (6) 7:13,14,15,17; 13:16;15:6 needs (1) 5:15 negotiation (2) 6:10;14:25 negotiations (1) 14:19 New (2) 4:5,22 notice (2) 5:22;9:25 noticed (1)
	H	K	M	
	hand (1) 13:15 happen (1) 16:3 happened (1) 8:15 happy (1) 9:1 hear (4) 6:25;10:12,13,16 heard (3) 6:3,23;7:23 hearing (4) 5:22;8:12;10:14; 15:16 hearings (1) 14:6 hesitate (1) 8:6 HESSLER (1)	Ken (1) 13:12		

August 23, 2012

7:6 number (1) 5:3 NY (2) 4:5,22	9:12;13:2 party (1) 14:18 past (1) 9:14 pay (1) 14:11 payments (1) 13:16 pays (1) 14:11 people (3) 11:24,25;13:6 period (1) 13:10 perked (1) 14:20 perspective (3) 5:19;7:11;11:13 phone (2) 8:18;14:14 Plaza (1) 4:21 pleading (1) 11:25 pleadings (1) 7:19 plus (1) 12:1 pm (4) 12:22,23;15:17; 16:10 point (5) 5:14;6:14,16;7:1; 15:3 position (6) 8:4;10:20,21,23; 11:17;12:6 possibility (1) 14:3 prepared (1) 6:15 presentation (1) 7:18 presented (1) 10:14 presentment (5) 5:23;8:20;9:10,25; 10:17 prior (2) 8:12;14:5 problem (1) 12:8 procedure (1) 8:3 proceedings (1) 16:10 process (9) 5:21,24;7:2,3;8:8, 16;9:6;10:9;13:3 propose (1) 12:10 proposed (7)	6:7,21,21;7:6;8:25; 15:17,18 provides (1) 14:2 put (3) 8:10;11:13;12:12 putting (1) 9:9	Reserve (1) 9:4 reserved (1) 14:21 Residential (1) 5:2 resolution (2) 6:24;13:10 resolve (1) 6:21 resolving (1) 5:11 respect (3) 13:18,22;14:1 respective (1) 6:15 responds (1) 10:22 response (1) 15:20 responses (1) 12:24 responsible (1) 13:19 right (6) 6:12;8:21,23;9:17; 15:12,14 road (2) 13:10,14 ROBERT (1) 4:25 Rockefeller (1) 4:21 run (1) 10:7	set (6) 7:16;10:23;12:19, 23;13:5;15:22 setting (2) 10:9;12:9 settled (1) 11:14 settlement (5) 7:7,12;9:19;12:9; 15:2 share (1) 9:21 shed (1) 8:25 sign (1) 15:25 signoff (1) 11:5 similar (1) 8:10 simple (2) 6:8,24 simply (1) 13:13 sit (1) 15:8 solicitation (1) 9:20 Somebody (3) 6:2;8:25;16:4 someone (1) 8:13 sort (2) 8:21;12:14 sounds (1) 9:17 specifically (2) 8:21;14:2 speed (2) 9:8;15:9 standpoint (1) 11:1 start (1) 14:8 statement (1) 7:10 statements (11) 11:11,18;12:5,10, 14,14,20,21,22;13:4; 15:18 STEPHEN (1) 4:8 stipulation (19) 5:11,18,21;6:7,9, 13,21,24;7:5,11,19; 9:24;10:1;12:20; 13:3,6;15:2,17,19 stipulations (1) 12:16 Street (1) 4:13 strong (1) 5:15
O		Q		
objection (7) 10:9,23;11:23; 12:9,23;13:6;15:19 objections (5) 8:18,20;10:11; 11:19;12:24 objectors (1) 12:11 obviously (1) 10:11 o'clock (3) 12:25;15:20,21 off (2) 8:5;15:25 office (2) 6:13,14 offline (1) 15:4 one (6) 5:14;6:9;10:18; 12:5;13:15;14:13 only (1) 13:3 opportunity (1) 12:11 optimistic (2) 9:8,12 order (7) 6:8,9,13,21;7:6,20; 15:15 ought (1) 14:7 out (4) 8:21;9:9;11:3,19 outlined (1) 8:8 output (1) 9:23 over (2) 8:6,7		R		
		quite (3) 5:13;9:22;11:2		
		raised (2) 7:14;9:10 RAY (5) 4:7;7:24;9:2;11:7; 15:24 realistic (1) 10:24 realistically (1) 10:19 really (3) 6:23;8:16;12:11 reasonable (2) 10:10;11:24 recap (1) 15:14 receive (1) 9:22 recommend (2) 6:15;8:5 record (2) 5:2;15:7 reference (1) 14:23 referring (1) 15:1 regardless (1) 10:14 regulators (4) 8:15,22,23;10:5 regulatory (3) 9:4,11;10:8 related (1) 14:22 relates (1) 9:19 relating (1) 15:18 replies (1) 12:24 reply (1) 15:20 report (1) 14:4 require (1) 12:19 ResCap (1) 15:22		
		S		
		same (3) 7:9;12:10;13:5 San (1) 4:14 schedule (2) 15:14;16:4 SCHROCK (14) 4:7;6:14;7:4,22,24, 25;8:13;9:1,2;10:20; 11:7,7;15:24,24 scope (1) 15:10 screw (1) 12:18 seems (1) 11:5 SEIFE (4) 4:24;14:16,16;15:5 sense (5) 7:3,5,8,8;10:2 September (7) 10:18;12:23,25; 15:16,20,21,22 servicing (1) 13:15		
P				
paid (2) 13:17;14:10 PARKE (2) 4:19;14:17 part (1) 14:6 particularly (1) 13:18 parties (7) 5:16,24;9:7;11:11, 13;13:21;15:18 parties-in-interest (2)				

August 23, 2012

structure (1) 10:7	5:21,24;9:7;12:18; 14:20,24;15:9			
subject (1) 6:10	upon (1) 7:18	2		
submission (1) 7:10	V	27th (1) 12:22		
submissions (2) 7:12,19	vantage (1) 6:14	3		
submit (4) 6:15,20;7:5,10	various (5) 8:15,22;9:3;14:18; 15:18	30 (1) 4:21		
subservicing (1) 5:12	version (1) 5:11	4		
suggest (3) 6:8;10:25;11:21	vetted (1) 8:14	4:25 (1) 16:10		
suggested (1) 5:22	W	5		
suggestion (2) 8:9;12:4	way (3) 10:10;12:12;13:20	5 (6) 12:22,23,25;15:17, 20,21		
support (2) 12:10,21	Wednesday (3) 11:23;12:23;15:19	555 (1) 4:13		
supporting (1) 12:9	week (3) 9:21;11:25;12:1	5th (5) 11:23;12:2,7,24; 15:20		
supportive (1) 12:14	weekend (2) 11:22;12:18			
sure (6) 5:25;8:19;12:13; 13:13;15:6,9	weeks (1) 9:14	6		
T	weren't (1) 5:12	601 (1) 4:4		
tee (2) 5:21,24	what's (1) 12:12	7		
Telephonically (5) 4:7,8,16,24,25	Whereupon (1) 16:10	7th (2) 12:25;15:21		
term (1) 8:24	within (1) 15:10	9		
terms (3) 6:23,25;14:19	woodwork (1) 11:19	94104 (1) 4:14		
thinking (1) 8:9	work (2) 5:16;9:13			
thought (1) 7:3	worked (1) 5:15			
today (6) 5:20;6:12,18;8:4, 19;9:6	working (1) 9:13			
today's (1) 5:12	Y			
Todd (2) 5:7;16:5	York (2) 4:5,22			
told (1) 8:22	1			
tomorrow (2) 11:4,8	10022 (1) 4:5			
true (1) 7:9	10112 (1) 4:22			
try (1) 10:7	11th (6) 7:17,18;10:14,18; 15:16,22			
two (1) 9:21	12-12020 (1) 5:3			
U				
up (7)				